



CONDITIONAL USE and CONDITIONAL USE MODIFICATION PROCESS

Montgomery County, Maryland

Conditional Uses and Conditional Use Major Modifications are subject to the same regulatory process that is described below. A Minor Amendment to an existing Conditional Use (or an existing special exception approved prior to October 30, 2014) may be approved administratively by the Office of Zoning and Administrative Hearings (OZAH) or the Board of Appeals, depending on which agency approved the Conditional Use (or special exception) in question, based on the process in Section 59.7.3.1 of the *Zoning Ordinance*.

Application Process

1. All applications for conditional uses must be submitted initially to the Montgomery County Planning Department for certification of completeness, along with all required materials and 25% of the required fee. The Planning Department is located at 8787 Georgia Avenue, in Silver Spring, and its telephone number is (301) 495-4610.
2. Once certified, the applications and materials must be filed with OZAH, along with the remaining 75% of the required fee. The fee schedule and filing instructions can be found on OZAH's website - <http://www.montgomerycountymd.gov/ozah/>. OZAH is located in the Council Office Building, Room 200, at 100 Maryland Avenue, Rockville, MD 20850. OZAH's telephone number is 240 777-6660.
3. The subject property must be posted by the Applicant with a sign supplied by OZAH that contains the case number and a phone number to call for information. The sign must be posted continuously throughout the case.
4. OZAH sends notice of the hearing to all confronting and abutting property owners and others, as described in Zoning Ordinance §59.7.5.E.2, and posts the application on its website. This hearing notice is the only formal notice, and it is up to each individual to follow up.
5. A zoning analyst in the Planning Department is assigned to the case. In a Technical Staff Report, the zoning analyst analyzes and makes a recommendation about whether the application satisfies the *Zoning Ordinance* requirements, and recommends what conditions should be attached to the Conditional Use or Modification, if it is granted.

Planning Board Hearing

6. Most conditional use applications, except applications for an accessory apartment or a telecommunications tower conditional use, are reviewed by the Planning Board. In cases to be reviewed by the Planning Board, the Technical Staff Report appears on the Planning Board website, http://www.montgomeryplanningboard.org/meetings_archive/, approximately 10 days before the Planning Board's public hearing.

9. The Planning Board holds a public hearing on the application, usually on a Thursday.

10. The Planning Board public hearing is a timed hearing that takes place in the following order:

- a. The zoning analyst goes first and explains the Technical Staff Report.
- b. The applicant goes next, has 15 minutes to present its case, and may reserve time for rebuttal after community representatives.
- c. Government officials have 7 minutes.
- d. The community goes next. Citizen associations have 10 minutes. An abutting neighbor has 5 minutes. Any other individual has 3 minutes.
- e. After the presentations, the Planning Board may ask questions, and then the members discuss the application and vote.

12. The Planning Board's recommendation and the Technical Staff Report are forwarded in writing to the Office of Zoning and Administrative Hearings (OZAH).

Hearing by Office of Zoning and Administrative Hearings

13. OZAH assigns a Hearing Examiner to conduct the second required public hearing.

14. The Hearing Examiner's public hearing has no set time limits; witnesses are sworn in; there is cross-examination after each witness testifies; and a complete transcript is made.

- a. The applicant puts on its case first through exhibits and testimony.
- b. Any other parties, whether in support or in opposition, then present their case(s).
- c. The applicant has the right to put on rebuttal witnesses and enter exhibits.
- d. The record includes hearing testimony and all exhibits submitted to the Hearing Examiner. Testimony and exhibits presented to the Planning Board are not part of the record or considered by the Hearing Examiner and the Board of Appeals unless they are submitted before or during the Hearing Examiner's hearing.
- e. After the close of the record, the Hearing Examiner has 30 days in which to issue a Report and Decision or to extend that time limit. Parties of record will be notified by mail when the Hearing Examiner's decision is issued, and any party of record or aggrieved party may file a written request, within 10 days after the Hearing Examiner's decision is issued, to present oral argument before the Board of Appeals.

If a timely request for oral argument is not received, the Hearing Examiner's report and decision becomes the final decision in the case.

Board of Appeals Review

15. If a request for oral argument is made, it must be filed with the Board of Appeals and the Hearing Examiner, and must concisely identify the matters to be presented at the oral argument. Any party of record or aggrieved party may, no later than 5 days after a request for oral argument is filed, file a written opposition or request to participate in oral argument. An opposition to a request for oral argument must be sent to the Board of Appeals and all parties as listed by the Hearing Examiner, and must be concise and limited to matters raised by the party who requested oral argument.

16. The Board of Appeals discusses the Hearing Examiner's Report and Decision during a public work session on a Wednesday and may, in its discretion, grant or deny an oral argument request. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. Regardless of whether the Board of Appeals has elected to hear oral argument, the Board of Appeals must approve or deny the conditional use application or remand it to the Hearing Examiner for clarification or the taking of additional evidence, if appropriate. An affirmative vote of 4 members of the Board of Appeals is required to approve a conditional use when 5 members are present, otherwise an affirmative vote of 3 members is required.

17. The Board must issue a resolution reflecting the Board of Appeals' decision no later than 30 days after voting on the matter, unless such time is extended by the Board of Appeals. Any aggrieved party may file a petition for judicial review of the Board's action under the Maryland Code, Land Use Article (Section 22-403), within 30 days after the Board's written resolution in the case.

Conditional Use

